

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3  
4 In re: Santa Fe Natural ) No. 16-MD-02695 JB/LF  
5 Tobacco Company Marketing )  
6 and Sales Practices ) June 13, 2018  
Litigation. ) 1:18 p.m.

7  
8 TRANSCRIPT OF PROCEEDINGS  
9 TELEPHONIC STATUS CONFERENCE  
BEFORE THE HONORABLE JAMES O. BROWNING  
UNITED STATES DISTRICT COURT JUDGE

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1           THE COURT: All right. So let's go ahead and get  
2 started.

3           Let me, first of all, thank everybody for allowing me to do  
4 this out-of-district and by phone. As some of your local counsel  
5 may know, I've been in two seven-week trials. I'm about to start  
6 another eight-week trial on July 9th. So if I was going to get  
7 any time with my family, it had to be about now. So I'm going to,  
8 as soon as this call is over, head to the airport and fly in and  
9 start five days of hearings on the eight-week trial that's about  
10 to take place.

11           But this allowed me to be in the Dallas area. I've got  
12 grandchildren here and a second home. And my middle son from New  
13 York flew in. He's a professor in the New York area, and it  
14 allowed me to visit with him in between his semesters. So I  
15 appreciate everybody being very courteous and allowing me to do  
16 this by phone, and I hope it works out for everybody.

17           All right. The Court will call In Re: Santa Fe Natural  
18 Tobacco Company Marketing, Sales Practices and Products Liability  
19 Litigation, case No. 1:16-MD-02695 JB/LF.

20           Will counsel enter their appearances? And probably each time  
21 anyone speaks today, we're probably going to have to identify  
22 ourselves, so our court reporter can get a clean record. But  
23 let's start with the Plaintiff.

24           MR. HABERMAN: Good afternoon, Your Honor. This is  
25 Jeffrey Haberman from Schlesinger Law Offices.

1 THE COURT: Mr. Haberman, good afternoon to you.

2 Who else?

3 MR. SCHULTZ: Good afternoon, Matt Schultz from Levin  
4 Papantonio, Pensacola, Florida, for the Plaintiffs.

5 THE COURT: All right. Mr. Schultz, good afternoon to  
6 you.

7 Who else? Anybody else on the Plaintiffs' side?

8 MS. MCGINN: Judge, Randi McGinn. I'm local counsel on  
9 the Plaintiffs' side with McGinn, Montoya, Love and Curry.

10 THE COURT: All right. Ms. McGinn, good afternoon to  
11 you.

12 Anyone else on the Plaintiffs' side? Everybody got their  
13 mute button off?

14 All right. How about for the Defendants?

15 MR. MONDE: Good afternoon, Judge. David Monde from  
16 Jones Day on behalf of the defense.

17 THE COURT: Good afternoon to you.

18 MS. REISMAN: Good afternoon, Your Honor. This is  
19 Sharyl Reisman, also from Jones Day, on behalf of the Defendants.

20 THE COURT: All right. Ms. Reisman, good afternoon to  
21 you.

22 Anyone else on the phone? Somebody else sounds like they  
23 came up.

24 MS. BELOTT: Debra Belott with Jones Day on behalf of  
25 the Defendants.

1 THE COURT: Give me that again because you got cut off  
2 here.

3 MS. BELOTT: Debra Belott with Jones Day.

4 THE COURT: Ms. Belott, good afternoon to you.  
5 Who else is on the phone?

6 MS. STAMBAUGH: Your Honor, good afternoon. This is  
7 Melanie Stambaugh. I am stepping in for Andy Schultz, who is on a  
8 well-deserved vacation, on behalf of the Defendants.

9 THE COURT: Ms. Stambaugh, good afternoon to you.  
10 Anyone else on the phone?

11 All right. Well, I do think I've received all the materials.  
12 I know you had a little difficulty getting those to go through,  
13 but I think I've gotten all the letters and everything that Mr.  
14 Monde listed out in his letter or email to Ms. Bevel.

15 Shall we start? I believe the agenda item was Defendants'  
16 discovery production problem that was outlined in Mr. Gdanski's  
17 February 23rd, 2018, correspondence.

18 Who should start there? I guess the Plaintiff. So,  
19 Mr. Haberman, are you going to take the lead here?

20 MR. HABERMAN: Your Honor, actually, Mr. Schultz is  
21 going to take the lead on that. I just wanted to tell the Court  
22 that Mr. Schlesinger regrets not being able to be on the phone.  
23 He's giving -- about to give an opening statement right now in  
24 another trial, so I'm filling in for him.

25 But Mr. Schultz is going to handle that situation, Your

1 Honor.

2 THE COURT: All right. Mr. Schultz?

3 MR. SCHULTZ: Thank you, Your Honor. Matt Schultz for  
4 the Plaintiffs.

5 Having read the letters, Your Honor, and given that everybody  
6 has time demands and you have a plane to catch, I'm not going to  
7 belabor what has already been set out in that correspondence. I  
8 would just summarily point out, given this is a status conference,  
9 that as early as last October, we pointed out what we perceived to  
10 be deficiencies in the Defendants' production. I think we've  
11 gotten something on the order of 350,000 documents over the course  
12 of roughly a year.

13 Several months later -- well, specifically, in late December,  
14 we were told document production was complete. At some point,  
15 roughly 90 days later, for whatever reason, the Defendants were  
16 still looking at document production issues and apparently  
17 discovered a coding error and -- or a predictive coding error,  
18 specifically. And as you know, we've since had a number of  
19 documents. I don't know the latest count. I think before the  
20 last production last week, it was something on the order of  
21 400,000 or more documents, many of which have been produced just  
22 days or a week or two before depositions of witnesses.

23 The bottom line, Your Honor, where we stand is, as we see it  
24 on the Plaintiffs' side, the Defendants engaged in predictive  
25 coding without consultation of the Plaintiffs, which is a

1 violation of the Court's EFI order. It was fouled up. We don't  
2 know exactly how, and even in light of Mr. Monde's letter of just  
3 the last couple of days, we don't know how or why. We essentially  
4 had our request to meet and confer ignored until David Monde and I  
5 had a brief discussion before a deposition on June 6th in Santa  
6 Fe, and then we received the letter this Court has now received,  
7 which I believe was dated on the 11th. And that is the first  
8 explanation, other than what has been described in the April phone  
9 call, that we've had of what's happened.

10 And I think the real point as to where we stand right now,  
11 Your Honor, is Mr. Monde's letter, while it was lengthy,  
12 repeatedly refers to the issue with predictive coding, but never  
13 identifies the issue, and -- nor does it explain why predictive  
14 coding was used and used without any consultation on Plaintiffs'  
15 part, the requirement of which is precisely to avoid this sort of  
16 situation that we find ourselves in now.

17 We have gone ahead with depositions. I've taken quite a few.  
18 Mr. Haberman has taken a couple. We have some Plaintiffs'  
19 depositions done as well. We did that with, at least, a sort of  
20 handshake agreement that if we found something incendiary in some  
21 later production, we might come back and ask limited questions of  
22 witnesses. But we didn't want to derail the schedule that we had  
23 just gotten into place within weeks of learning of this issue on  
24 the Defendants' side.

25 And where we stand now, Your Honor, is we have a motion to

1 compel, a draft of which has been shared with Defendants, I  
2 believe, over the weekend, maybe last Friday -- and Mr. Monde can  
3 correct me if I'm wrong about that. So in terms of status, that's  
4 where we are. We're concerned that it's going to derail the  
5 schedule, at least as to Plaintiffs' expert reports or, at least,  
6 some temporary delay. But there is other prejudice that will be  
7 laid out in the motion, particularly the accelerated review we've  
8 had to do of a document production that we've warned Defendants  
9 seemed deficient. They shrugged off our concerns. And then we've  
10 now gotten more documents in the last couple of months as we're  
11 taking depositions of corporate witnesses than we got in the  
12 course of the entire year before.

13 So it's a big deal, Judge. But in all candor, we don't know,  
14 at this point, what went wrong, why it went wrong, whether it's  
15 been corrected, because we've not been privy to what they've done  
16 to correct it either, other than the brief discussion Mr. Monde  
17 and I had about some hand-review of documents. So we just want to  
18 get to the bottom of it, Judge, and know whether there is an  
19 issue, and, if so, how to address it. The last thing we want is  
20 more delay in the case.

21 But that motion will be forthcoming, and given everyone's  
22 schedules, we recognize that it may not make it to the front  
23 burner given your trial schedule or whatnot. But we're going to  
24 get it on file, and then we'll proceed from there, Judge, unless  
25 the Court has some other idea.



1           THE COURT: Well, tell me -- I don't want to make you  
2 argue your motion to compel. But tell me what you're going to  
3 want the Court to do. What is it that -- I mean, I guess my, sort  
4 of, gut assessment is we've got to -- we had problems. Defendants  
5 acknowledge they have problems. What is it that -- what is it  
6 that you're going to want the Court to do?

7           MR. SCHULTZ: Well, what we proposed, Your Honor, in our  
8 initial response, after Mr. Monde called us in April, was that we  
9 take a short corporate rep deposition and find out what happened  
10 and have someone there on our side who's knowledgeable in EFI, who  
11 can either tell us, look, this makes sense. It sounds like they  
12 did X, Y and Z and that that would result from it. And it sounds  
13 like what they did to fix it would fix the problem. So let's live  
14 with it and move on. Or we will find that there are other  
15 problems because the Defendants have been, you know, obscure about  
16 what was wrong and what's been done to fix this, which, of course,  
17 raises questions on our side. That request went ignored and has  
18 gone ignored. I mean, we've not gotten a response on it at all.

19           There is also the question of expense on the Plaintiffs'  
20 side. Twofold, one the accelerated review required by the, you  
21 know, production of 400 some odd thousand documents over the  
22 course of a few months, as well as the fact -- and I've  
23 experienced this myself preparing for depositions, including the  
24 one I'm taking tomorrow -- that we have a database that we are  
25 told is complete or has the complete production in it, and we

1 conduct our searches. And then we're told, Oh, no, you only had  
2 40 percent of the responsive documents. So all of that searching  
3 or at least much of that searching that went on now has to be done  
4 again in light of the production that's been made more recently,  
5 which we have just gotten, I believe, the last of -- within the  
6 last seven to ten days. That may be fewer than that.

7 THE COURT: Are you doing manual review, or are you  
8 doing predictive coding review yourself? How are you going about  
9 it?

10 MR. SCHULTZ: Well, we've loaded the documents, Your  
11 Honor, into a database, and we have Boolean search capability. So  
12 we can do word searches, we can do custodian searches, things of  
13 that nature. But the searches, of course, you know, the way you  
14 build these searches out and build a cross-exam, or what have you,  
15 off of them presumes that you have total knowledge. And, of  
16 course, it turns out we did not as we're doing this.

17 So, you know, I can't lay out, Your Honor, the specific  
18 relief we would ask were we to take a two-hour, three-hour  
19 corporate rep depo and find out what happened and whether the fix  
20 is good enough, quote/unquote, there might be other relief  
21 requested at that point. Maybe we would find out we don't need  
22 any relief, which is what we're being told by the Defendants.  
23 But, of course, we would like to find out for ourselves.

24 THE COURT: When you talk about a corporate rep, who are  
25 you thinking of?

1 MR. SCHULTZ: Well, it would be a corporate rep.  
2 Essentially, you know, the topics would be why you were using  
3 predictive coding without consultation? What predictive coding  
4 did you use? What use did you make of the search terms that  
5 Plaintiffs have provided to you? And I don't profess to  
6 understand all the intricacies of technology-assisted review. We  
7 have lawyers --

8 THE COURT: So you're wanting a 30(b)(6), and you don't  
9 care about who it is. You just want a body there that's going to  
10 provide you with this information?

11 MR. SCHULTZ: Correct, Your Honor.

12 THE COURT: Okay. All right. Let me come back. I've  
13 got a thought, but let me come back to it. Anything else you want  
14 to say, Mr. Haberman, before I hear from Mr. Monde?

15 MR. HABERMAN: No, sir.

16 THE COURT: All right. I mean, Mr. Schultz. I'm sorry.  
17 Anything else you want to say before I turn it over to  
18 Mr. Monde?

19 MR. SCHULTZ: No. Thank you, Your Honor.

20 THE COURT: Mr. Monde, I guess my thoughts are that,  
21 given your letter, your June 11th letter, it seems like a two-hour  
22 30(b)(6) deposition is a fairly reasonable proposition to try to  
23 get some information, and then y'all have been pretty good, as I  
24 think you point out in the letter, avoiding discovery disputes.  
25 But it seems like a 30(b)(6) might be a good way to see whether a

1 motion to compel is even necessary.

2 What's your thought?

3 MR. MONDE: I agree with that, Judge. And the purpose  
4 of the letter was to try to set out in writing and explain that  
5 the fix is this: We acknowledge that we used predictive coding  
6 without conferring with the Plaintiffs. We certainly, as the EFI  
7 order was being negotiated and early on in the process, had  
8 discussed with Plaintiffs the fact that predictive coding might be  
9 used. But there was a communication failure when it came time to  
10 use it, when we realized the scope of documents that the EFI  
11 search terms hit. Those search terms included some very common  
12 words such as "Natural" or "American Spirit." And so, obviously,  
13 further steps needed to be taken to separate responsive from not.

14 And in terms of what went wrong with the predictive coding,  
15 we're happy to be transparent and to share that, Judge. But the  
16 important point is this: It was wrong. We recognized it when it  
17 came to our attention. We promptly notified the Plaintiffs, and  
18 then we took steps to fix it, not by trying to redo the predictive  
19 coding. Because if we had done that, we obviously would have  
20 first coordinated with the Plaintiffs to work out a protocol for  
21 doing that, and then to execute on it.

22 We rejected that approach, Judge, because that approach was  
23 going to materially impact and delay the schedule. Instead, what  
24 we did is we took all of the documents that had been set aside by  
25 the faulty predictive coding, and we did it the old-fashioned way.

1 We used human reviewers to do a manual review, to separate the  
2 responsive documents that we had committed to produce and those  
3 that we had not and that were not responsive. And that is what we  
4 did.

5 And we assembled a significant number of people, spent  
6 significant resources doing it. But that was the only practical  
7 way to do two things: Resolve the issue once and for all with  
8 predictive coding, to, in effect, produce to the Plaintiffs all  
9 the documents that would have been produced had we never used  
10 predictive coding, and to do it in a way that was timely so that  
11 the schedule would not be materially impacted.

12 While it is true that we have not responded in writing until  
13 our June 11 letter, Matt Schultz and I have had any number of  
14 discussions as professionals, rolling up our sleeves, trying to  
15 figure out how to get through this issue.

16 And what I'm talking about specifically is that no  
17 depositions had been taken when this issue arose, but three were  
18 on the schedule. And Matt and I e-mailed and spoke, and we  
19 discussed possibilities either going forward as scheduled or  
20 postponing the depositions. He elected to go forward with two of  
21 them and to do a short postponement of one. I then, in turn, told  
22 him that what we would do is we would prioritize -- triage, if you  
23 will -- our manual review of the documents, so that he would get,  
24 first, the documents related to the depositions he wanted to take.  
25 And that's what we did.

1           And then while this rolling production was continuing, the  
2       Plaintiffs asked us to make available other witnesses and we  
3       agreed to do that. They worked with us to set the dates of those,  
4       and we got those scheduled. And we continued to prioritize the  
5       production, so that they would get the documents that they needed  
6       for the -- to complete those depositions.

7           And Matt's absolutely right. He and I have worked together  
8       for a long time on different cases, and we did have a gentleman's  
9       agreement that if he finished the deposition and if he later found  
10      documents that he didn't have at the time of the deposition that  
11      he felt warranted a limited follow-up, we would do that. And that  
12      commitment remains, Judge.

13          The -- notwithstanding this issue, though, it's important for  
14      the Court to understand just how much progress we've made in  
15      discovery. And to just give some brief context on that, let me  
16      explain that after the issue of the Plaintiffs' leadership was  
17      resolved, Plaintiffs and Defendants had a series of productive  
18      meet-and-confer meetings to set out a new scheduling order. Part  
19      of that was to figure out how much time we would need for fact  
20      discovery.

21          And what we did is we had a discussion with the Plaintiffs.  
22      We asked them to project the approximate number of company witness  
23      depositions they intended to take, and their projection was ten.  
24      And, of course, that came with the usual caveat that professionals  
25      would give in that situation, that it might rise or fall depending

1 on how depositions went. And we, in turn, told them that we would  
2 need time to depose each of the 12 named Plaintiffs.

3 With that information in hand -- and, again, before any of  
4 the supplemental document issue arose -- we agreed that July 10th  
5 would be a reasonable cutoff for fact discovery. Since the issue  
6 with the supplemental production has arose, we have taken six of  
7 the -- the Plaintiffs have taken six company depositions, two more  
8 will be taken this week, and the last two -- because their  
9 projection of ten turned out to be spot on, at least so far. The  
10 last two are going to be taken in the week or two after the  
11 discovery cutoff for reasons having nothing to do with the  
12 supplemental document production, but purely availability and  
13 convenience of witnesses and counsel, and we've agreed to do that.

14 And then on the other side, we have deposed three of the  
15 named Plaintiffs. We are on schedule to complete that by the  
16 discovery cutoff. As alluded to in the agenda item, we had served  
17 written discovery requests -- they're limited in scope, but some  
18 written discovery requests -- of the Plaintiffs in late March. We  
19 didn't get any responses to those until early June. And even now,  
20 we -- they're incomplete in material ways. We've been getting the  
21 Plaintiff materials just on the eve of the depositions. We're  
22 working through that. I'm sure that if issues arose in terms of  
23 our getting documents late, I'm sure that Matt and his team  
24 members will work with us, as we pledge to do with them.

25 As I said in the letter, Judge, we're sorry this happened.

1 It was unintentional. But we are sorry that it happened, and we  
2 did what we need to do, which is to roll up our sleeves, work with  
3 the Plaintiffs, and try to get them what they were entitled to,  
4 and in a way that did not prejudice them, and in a way that  
5 preserved the schedule as much as we can.

6 I can't respond to a motion that hasn't been filed. I don't  
7 know what prejudice that they incurred. They would have needed to  
8 review these documents anyway. It's a little hard to quantify  
9 what accelerated review means and what incremental costs were  
10 incurred with that. But before that issue gets put before the  
11 Court, if it ever does, I assure you that Mr. Schultz and I will  
12 confer about that, attempt to eliminate our differences, and, if  
13 not, narrow them, so that we can take up as little of the Court's  
14 time as needed to resolve this.

15 So bottom line, our focus is on the merits. We encourage the  
16 Plaintiffs to stay focused that way. Their current deadlines for  
17 expert disclosures is August 3rd. I've already told the  
18 Plaintiffs that if they need additional time, whether it's because  
19 of the supplemental production or for other reasons, we'll work  
20 with them on that. That's why we haven't had the kinds of  
21 discovery disputes that typically arise in these MDLs and often  
22 take over the merits of the MDLs. We've avoided that, and we're  
23 going to take that same mindset and approach at trying to resolve  
24 this issue.

25 THE COURT: But you don't have any opposition for a



1 two-hour 30(b)(6) of one of your corporate reps to let them  
2 explore what they need to do with the motion to compel?

3 MR. MONDE: No, sir.

4 THE COURT: Okay.

5 All right. Mr. Schultz, is there anything else? It sounds  
6 like you got your deposition. And I assume you'll probably take  
7 the deposition before you file the motion to compel, and then  
8 you'll -- after you take your deposition, you'll talk to Mr.  
9 Monde? And if you can't work it out, then you'll file your motion  
10 to compel?

11 MR. SCHULTZ: Yes, Your Honor. That's why we held off  
12 on it precisely, because we thought this might come about this  
13 way. I would ask for three hours only because I don't know enough  
14 about EFI. And David, I think, will tell you, if I'm involved in  
15 a deposition and you give me ten years, if I only need an  
16 hour-and-a-half, that's what I'm going to do. And I would like to  
17 at least put on the record that we should probably have some  
18 discussion with the Defendants about deferring the expense of that  
19 deposition, which has been occasioned by, essentially, what you've  
20 heard here today, through no fault of our own. But that's  
21 something I think would be better for us to talk about before we  
22 try and ask the Court for anything.

23 THE COURT: Do you agree to a three-hour deposition,  
24 Mr. Monde?

25 MR. MONDE: I do, Judge. And I will tell you this:

1 While the Federal Rules and our scheduling order provide for  
2 seven-hour limits, my experience with Matt and Mr. Haberman for  
3 that matter, and vice versa, is if we need a bit more time, we've  
4 each been giving the other that time, and we also have been  
5 efficient such that some depositions have taken less than that.  
6 If Matt's good faith estimate is about three hours, we'll work  
7 with that.

8 THE COURT: All right. And if they incur some expenses  
9 as a result of the deposition, I won't make any ruling on that  
10 now. But I can tell you, Mr. Monde, I'll probably be favorable to  
11 Mr. Schultz asking for his expenses on this deposition to be  
12 reimbursed.

13 MR. MONDE: He won't need to ask for those, Judge.

14 THE COURT: Okay. All right. Mr. Schultz, anything  
15 else on agenda item 1?

16 MR. SCHULTZ: No. Thank you, Your Honor.

17 THE COURT: All right. Let's then go to the Defendants'  
18 agenda items.

19 MR. MONDE: Judge, I may have some good news for you. I  
20 feel that we have covered those in the course of our discussion.

21 THE COURT: Okay.

22 MR. MONDE: And I really don't think that there is  
23 anything else to add. I would simply ask Mr. Schultz's commitment  
24 that we get the discovery materials from the Plaintiffs at least  
25 72 hours in advance of their depositions. I had previously

1 offered them the opportunity to produce those to us on a rolling  
2 basis. But we do need to get them sufficiently in advance to be  
3 able to make meaningful use of them. And that works to the  
4 benefit of both sides, because it would eliminate any potential  
5 need to reopen the deposition because of late-received materials.

6 THE COURT: Can you live with that request, Mr. Schultz?

7 MR. SCHULTZ: Well, I will say Mr. Haberman is in charge  
8 of that, but it certainly sounds reasonable to me, Judge. If  
9 there are any practical limitations, I think Mr. Haberman could  
10 address those. I would not know of them.

11 THE COURT: Do you agree, Mr. Haberman?

12 MR. HABERMAN: I think so. Mr. Monde's request seems  
13 reasonable. Let me just say, there was a bit of an oversight.  
14 Once we realized that there was an oversight, we worked quickly  
15 and are working quickly to rectify that. And we will do our best  
16 to get these materials over to Mr. Monde at least 72 hours before  
17 each Plaintiffs' deposition.

18 THE COURT: Does that work for you, Mr. Monde?

19 MR. MONDE: It does.

20 THE COURT: Anything else that the Defendants want to  
21 raise or discuss, Mr. Monde?

22 MR. MONDE: No, sir. Thank you for your time.

23 THE COURT: All right. Let me go back to the motion to  
24 compel. Let me tell you where I am. When I agreed to the MDL, it  
25 has been my practice since I became a judge to do all my own

1 discovery, and that may have played into your agreeing to have me  
2 hear this case. With these three seven-week and eight-week trials  
3 that I'm in, for the first time in my career, I turned over the  
4 discovery of my civil cases to the magistrate judges.

5 So I say that just to give you a bit of a choice. If you  
6 need immediate relief during this period of time -- which will  
7 probably come to an end at the end of August for me. I think the  
8 trial is supposed to end August 31st -- you'll have to go to the  
9 magistrate. You'll have to go to Laura Fashing, who is the  
10 magistrate judge on this. If you need -- if you don't need it  
11 done before August 31st, then I'm not sure exactly what I'm going  
12 to do when I come out of this trial. I've got -- one of our  
13 judges is taking senior status, and I'm picking up about a  
14 two-week civil trial in an Indian case, and so I'm not exactly  
15 sure if I'm going to pick it up immediately.

16 But I'll give you a choice. If you want to bump it over past  
17 August 31st, if you want me to do it, I'll try to do it. If  
18 you're comfortable with Judge Fashing doing it, she can do it.  
19 But up till August 31st, I'm not giving you a choice. After  
20 August 31st, if you want me to do it, I'll just work it in and  
21 I'll be available. So I'll give you a little guidance on that.

22 MR. MONDE: Judge, I will say, on behalf of the defense,  
23 that obviously we think that the Court's familiarity with this  
24 case and the parties and the lawyers and the issues is critical  
25 context. And sitting here today, I don't know of any issue that

1 would be so time sensitive that it could not wait until after the  
2 Court returns to Albuquerque from the trial.

3 But we will take the Court's comments into consideration as  
4 we continue to work with Matt and Plaintiffs to resolve or at  
5 least narrow the issues.

6 THE COURT: Okay. And it's kind of the Plaintiffs'  
7 choice, since it's your motion. If you want it quick, Ms. Fashing  
8 will jump on it, and if you want to wait until I get back on,  
9 because so far I think I've handled everything in this case, then  
10 that's your call. And I'll -- like I said, I'll make myself  
11 available. Even if I haven't changed my policy across the board  
12 on civil cases, I will pick yours up if you want to wait until  
13 after August 31st.

14 MR. MONDE: Well, Judge, just to be clear, this is David  
15 Monde talking back on behalf of Defendants. Obviously, it would  
16 be Matt Schultz's motion. So he would be the one, I guess,  
17 ultimately making that decision.

18 MR. SCHULTZ: Matt Schultz, Your Honor. We will know  
19 after we take the 30(b)(6), which I presume will happen in short  
20 order, and I'll be back in trial myself starting in September. So  
21 I guess what we learn in that deposition will dictate the relief  
22 we seek, if any. And I appreciate that.

23 THE COURT: Well, I'm sorry that I'm a little bit  
24 unavailable, but I do have to be mindful not only of what I can  
25 physically do whenever I'm in a seven- or eight-week trial, but

1 also I'm having to work with colleagues who are having to pick up  
2 my work, and it's a little tricky for me to give stuff to the  
3 magistrate judges and then take it back. So I'll have to be a  
4 little careful in how I work with my colleagues, too.

5 Is there anything else we need to discuss while we're  
6 together? Anything else I can do for you? Mr. Schultz?  
7 Mr. Haberman?

8 MR. SCHULTZ: I think we're good.

9 MR. HABERMAN: No, Your Honor. Nothing from us. I  
10 think we're good.

11 THE COURT: How about you, Mr. Monde?

12 MR. MONDE: Nothing here. Thank you very much.

13 THE COURT: All right. Well, again, thank you very much  
14 for your courtesy in letting me do this out-of-district and on the  
15 phone. I hope it worked for y'all, and I appreciate y'all letting  
16 me have this one extra day with my son. So I hope y'all have a  
17 good afternoon. Call us if you need anything.

18 MR. MONDE: Good luck with your trial, Judge. Thank  
19 you.

20 THE COURT: Bye-bye.

21 **(Court in recess at 1:51 p.m.)**

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 \_\_\_\_\_ )  
4 In re: Santa Fe Natural ) No. 16-MD-02695 JB/LF  
5 Tobacco Company Marketing )  
6 and Sales Practices )  
Litigation. )  
\_\_\_\_\_ )

7 CERTIFICATE OF OFFICIAL COURT REPORTER

8 I, Carmela V. McAlister, CRR, RPR, New Mexico CCR #306,  
9 Federal Official Realtime Court Reporter, in and for the United  
10 States District Court for the District of New Mexico, do hereby  
11 certify that pursuant to Section 753, Title 28, United States  
12 Code, that the foregoing is a true and correct transcript of the  
13 stenographically reported proceedings held in the above-entitled  
14 matter on June 13, 2018, and that the transcript page format is in  
15 conformance with the regulations of the Judicial Conference of the  
16 United States.

17 Dated this 18th day of June 2018.

18  
19 /s/

20 \_\_\_\_\_  
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